

Statewide Cannabis Cultivation Policy, Implementation, and Enforcement

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Water Quality Coordinating Committee Meeting

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Background - Cannabis Pilot Program

Unregulated land development for cannabis cultivation threatens public safety, impacts wildlife, pollutes the land and streams, and destroys habitat

- ▶ Pilot program initiated in July 2014
- ▶ Joint Water Boards/Fish and Wildlife Strategic Plan
- ▶ Four-pronged strategy:
 - ▶ Interagency coordination
 - ▶ Development and implementation of regulations
 - ▶ Regions 1 (North Coast) and 5 (Central Valley)
 - ▶ Education and outreach
 - ▶ Enforcement



Potential Environmental Impacts

- ▶ Negative impacts to wildlife:
 - ▶ Rodenticide poisoning
 - ▶ Habitat degradation
 - ▶ Timber conversions
- ▶ Negative impacts to water quality:
 - ▶ Sediment from grading and site development
 - ▶ Agrochemicals and domestic waste
 - ▶ Improper chemical storage
- ▶ Negative impacts to water quantity:
 - ▶ Water diversions

Activities Resulting in Impacts

- ▶ Grading & Site Development
- ▶ Domestic Waste Discharges
- ▶ Timber Conversions
- ▶ Water Diversions
- ▶ Improper Chemical Storage



Current Legal Landscape

- ▶ Medical use legalized in 1996 (Compassionate Use Act)
- ▶ Three bills adopted in 2015 - Assembly Bills (AB) 243 and 266; Senate Bill (SB) 643 (MMRSA)
- ▶ SB 837 adopted in June 2016 - included clean-up language for three 2015 bills (MCRSA)
- ▶ Proposition 64 passed November 2016, allowing recreational cannabis use for adults (AUMA)
- ▶ SB 94 adopted June 2017 - consolidated provisions of MCRSA and AUMA and established the Medicinal and Adult-Use Cannabis Regulations and Safety Act (MAUCRSA)

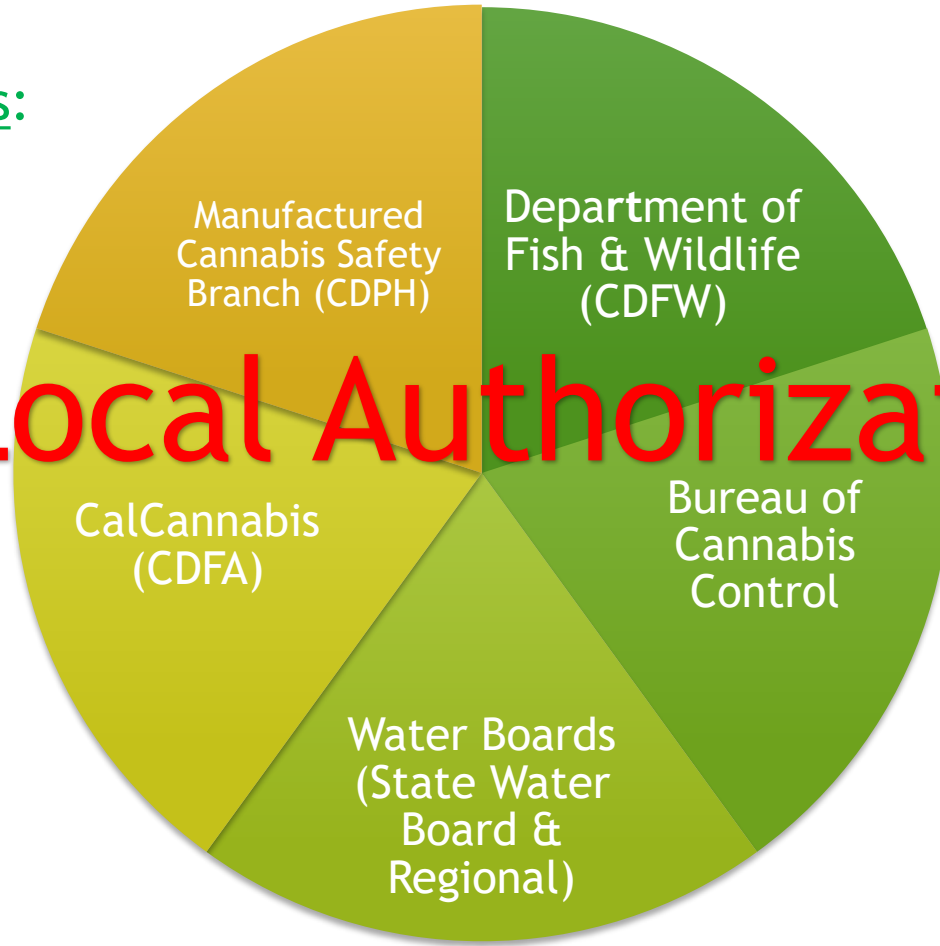


Cannabis Cultivation Licensing and Permitting Programs

Licensing Agencies:



Local Authorization



Permitting Agencies:





Enforcement Strategy

- ▶ Focused enforcement efforts in high priority watersheds
- ▶ Progressive enforcement for out-of-compliance cultivators who are licensed and enrolled
 - Initial focus on education and compliance assistance
 - **Exception** for egregious bad actors
- ▶ More significant formal enforcement for non-regulated sites causing adverse environmental impacts
- ▶ Extensive coordination with other state and local agencies

Water Boards Responsibilities

“address discharges of waste ...by adopting a general permit, establishing waste discharge requirements...”

Water Code Section 13276 (b)

*“Ensure individual and cumulative effects of water diversion and discharge associated with cannabis cultivation **do not affect instream flows needed** for fish spawning, migration, and rearing, and flows needed to maintain natural flow variability”*

Business and Professions Code section 26060.1(b)(1)

Water Boards Responsibilities (cont'd)

Shall adopt principles and guidelines [through policy for water quality control] for diversion and use of water for cannabis cultivation:

MAY INCLUDE (but are not limited to):

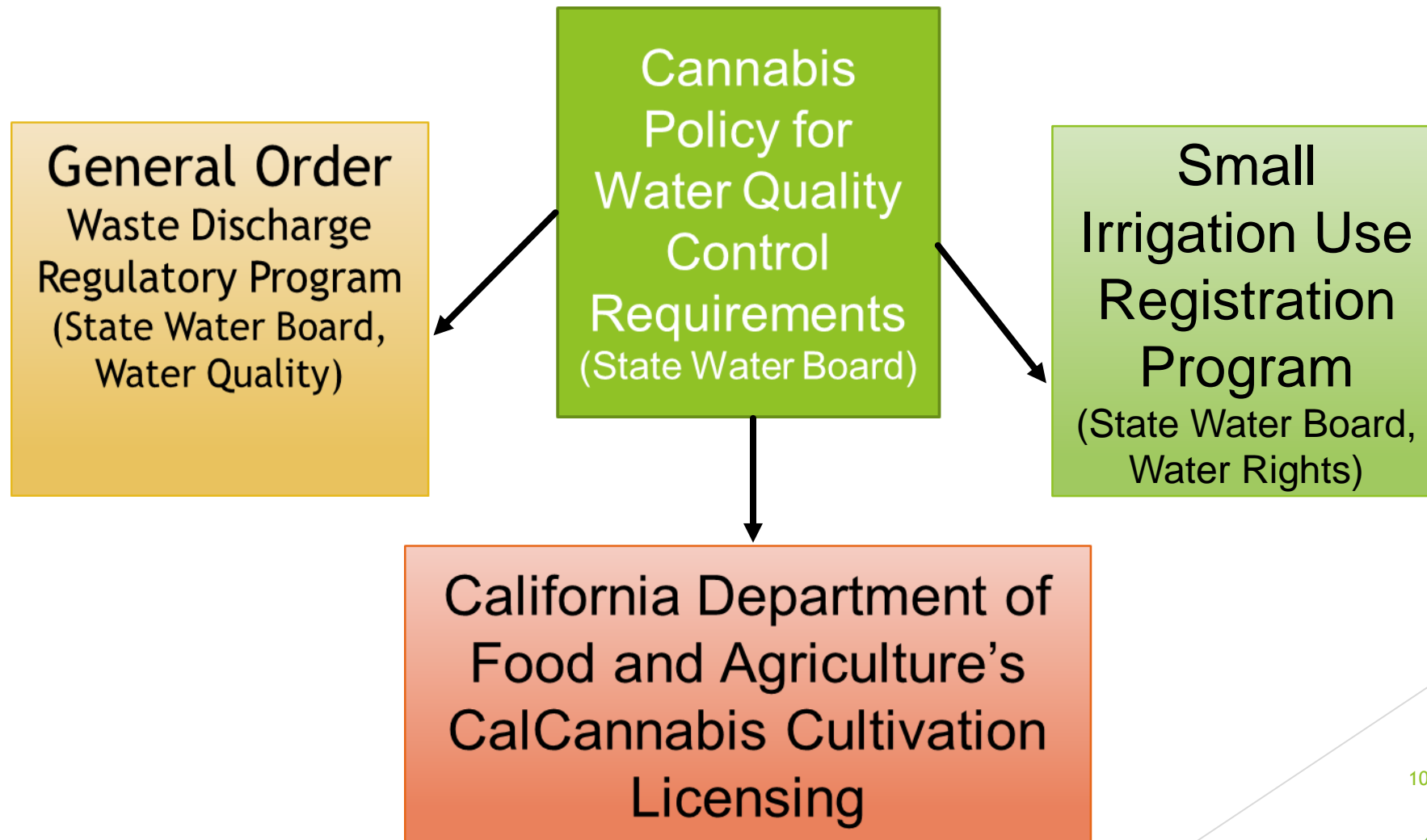
- ▶ Instream flow objectives;
- ▶ Limits on diversions;
- ▶ Requirements for screening of diversions and elimination of barriers; and
- ▶ Requirement that apply to groundwater

SHALL INCLUDE MEASURE TO PROTECT

- ▶ Springs,
- ▶ Wetlands, and
- ▶ Aquatic habitat

Water Code Section 13149(a)(1)(A) and (a)(2)

Cannabis Programs Regulatory Flow



Cannabis Cultivation Policy

Flow Requirements:

- ▶ Narrative & Numeric

Regulates Springs:

- ▶ Fully contained springs can request exemption from some requirements, but still subject to 50% visual bypass and groundwater requirements

Groundwater Requirements:

- ▶ If potential to significantly affect surface water then State Water Board may impose requirements

Compliance Gages:

- ▶ Cultivator may request or State Water Board may require installation of compliance gage



Cannabis Small Irrigation Use Registrations

- ▶ For **diversion of surface water to storage** during wet season - **forbearance period** during dry season
- ▶ Accessible through same portal General Order enrollment
- ▶ Max. Diversion Amount: Up to 6.6 acre-feet per year
- ▶ Max. Diversion Rate: 10 gallons per minute
- ▶ Not available for diversions from:
 - ▶ Fully appropriated streams;
 - ▶ Wild and Scenic Rivers; and
 - ▶ Where State Water Board has received CDFW instream flow recommendation



Registrations: 451 rec'd; 369 paid; 283 issued

General Order Discharger Classifications

Non-Commercial

- ▶ Personal use exemption
- ▶ Not required to enroll or pay a fee

Commercial

- ▶ All commercial cannabis activities require coverage under the General Order
- ▶ Conditional Exemption (indoor & outdoor)
 - ▶ Requires coverage under waiver of waste discharge requirements and one time fee
- ▶ Tier 1 and Tier 2 based on size and risk
 - ▶ Requires enrollment under General Order, enrollment fee, and annual fee thereafter

Current Enrollment (as of October 15, 2018)

CDFA Total Active Temporary Licenses: 2,527

Water Boards' Total General Order/Waiver
Enrollment: 4,505*

* Includes enrollment in both North Coast and Central Valley Regional Board cannabis programs and the statewide General Order

Challenges/Issues for Enrollment

- ▶ **Tribal Flags** - assumed numbers would be higher, only 36 sites have triggered a tribal flag, 9 issued NOA
- ▶ **Fires, Carr and Mendocino Complex** - 59 sites impacted
- ▶ **Indoor Cultivation** - assumed numbers would be lower, discharge to POTWs limited, cannot cover discharge to land or OWTS
- ▶ **Deconfliction** - difficulty getting deconfliction from law enforcement for non-enforcement compliance site inspections
- ▶ **Black Market** - black market and out-of-state sales still viable, legal market is saturated and permitting costs high

Cannabis Policy and Cannabis Cultivation General Order Update

- ▶ Main proposed updates to Cannabis Policy and Cannabis Cultivation General Order focused on:
 - ▶ Tribal Buffers (permission to cultivate on and/or within 600 feet)
 - ▶ Conditionally Exempt Indoor Cultivation Sites
 - ▶ Onstream Reservoirs
- ▶ Minor clean up and clarifications based on feedback received during initial implementation efforts
- ▶ Broader review and update in the future (anticipated 2021/2022)

Websites and Tools

New:

▶ Online Cannabis Compliance Gage Mapping Tool

- ▶ https://www.waterboards.ca.gov/water_issues/programs/cannabis/online_mapping_tool.html

▶ Map of Existing Flow Requirements

- ▶ https://www.waterboards.ca.gov/water_issues/programs/cannabis/existing_flow_req.html

▶ Cannabis Compliance Gages

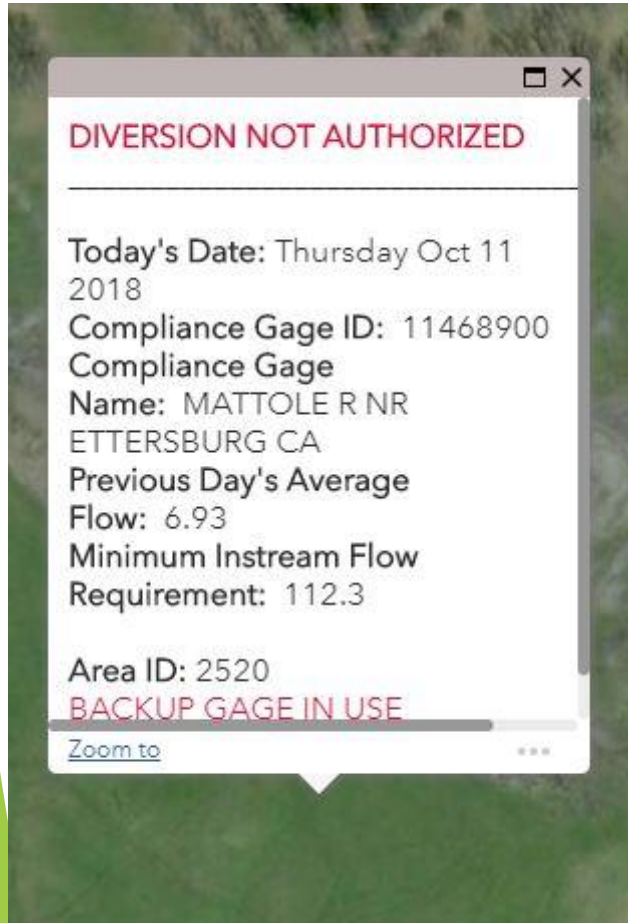
- ▶ https://www.waterboards.ca.gov/water_issues/programs/cannabis/tessmann_instream_flow_requirements.html

Needed:

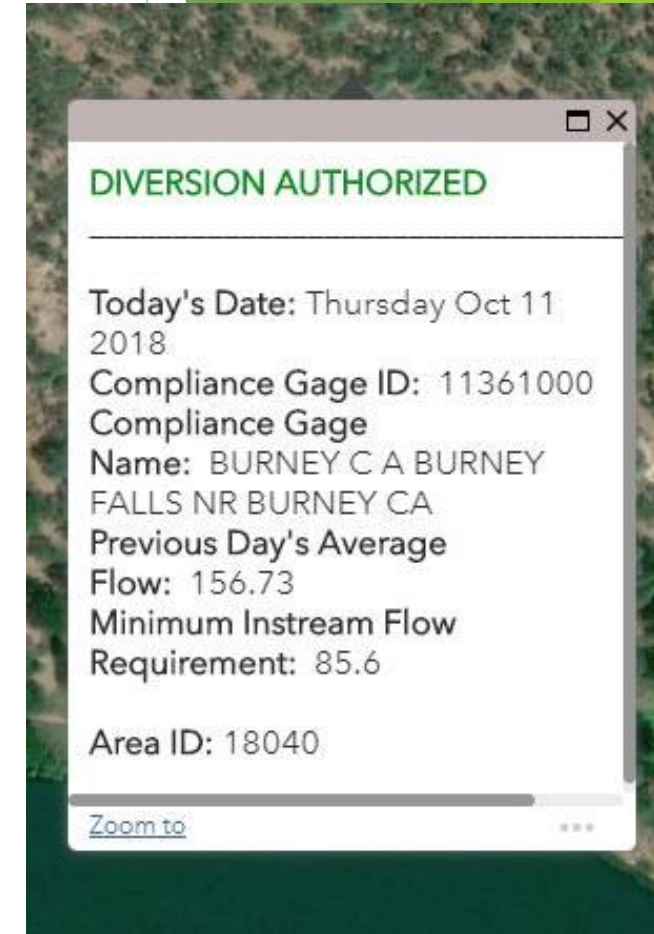
▶ Case Management Tool

- ▶ Exploring existing (GeoTracker, CIPS) and new (PEGA, GEARS) platforms

Online Compliance Gage Mapping Tool



- ▶ Click on map to identify location of your point of diversion and a Gage Pop-Up Box will appear with information about whether **DIVERSION IS AUTHORIZED** or **DIVERSION IS NOT AUTHORIZED** for that day
- ▶ Cannabis cultivators are required to check if water is available to divert at their point of diversion (e.g., pump inlet) at least daily, prior to diverting



Existing Flow Requirement Website

- ▶ Compiles existing flow requirements throughout California (from biological opinions, hydropower licenses, etc.)
- ▶ Estimated geographic extent of each requirement is represented by yellow layer in GIS mapping tool
- ▶ Clicking on layer provides overview of flow requirement for applicable stream reach





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